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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 QUILLON EDWARD CLEMONS,

9 Petitioner,

10 v.

11 PAUL PASTOR, PIERCE COUNTY  
12 SHERIFF,

13 Respondent.

Case No. C11-5397BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

14 This matter comes before the Court on the Report and Recommendation (“R&R”) of  
15 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 10) and Petitioner  
16 Quillon Edwards Clemons’ (“Clemons”) motion to voluntarily dismiss petition (Dkt. 11).


17 On August 22, 2011, Judge Creatura issued the R&R recommending that Clemons’  
18 petition be dismissed with prejudice because Clemons’ claims are unexhausted, time-barred,  
19 and Clemons failed to show that either statutory tolling or equitable tolling applies to his  
20 claims. Dkt. 10 at 5-6. On September 7, 2011, Clemons filed a motion to voluntarily  
21 dismiss his petition requesting that the Court dismiss the petition without prejudice so that  
22 he may exhaust his administrative remedies. Dkt. 11.

23 The Court denies Clemons’ motion because, based on the record before the Court,  
24 any attempt by Clemons’ to exhaust his claims and file another petition would be futile. His  
25 claims are unexhausted and time-barred by over two years.

1 The Court having considered the R&R, Clemons' motion, and the remaining record,  
2 does hereby find and order as follows:

- 3 (1) Clemon's motion to voluntarily dismiss is **DENIED**;  
4 (2) The R&R is **ADOPTED**;  
5 (3) A Certificate of Appealability is **DENIED**; and  
6 (2) This petition is **DISMISSED with prejudice**.

7 DATED this 21st day of September, 2011.

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10 BENJAMIN H. SETTLE  
11 United States District Judge  
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